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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

JOY ELIZABETH JOHNSON, **Plaintiff and Appellant,** **v.** **JOSEPH LEWIS SAUNDERS et al.** **Defendants and Respondents.**	**A104475** **(Solano County Super. Ct. No. FCS022324)**

Appellant Joy Elizabeth Johnson, appearing here in propria persona, contends that she has copyrighted her personal name, and that her former husband and his attorney are required to pay her more than $64 million in damages, because they referred to her by name in pleadings filed in the parties' family law action. The trial court entered an order granting a special motion to strike (Code Civ. Proc., § 425.16) as to appellant's claims.

I. FACTS AND PROCEDURAL HISTORY

Our review of the record in this appeal is severely impeded by multiple deficiencies in appellant's briefs, which are almost unintelligible. We experience great difficulty in accurately stating the facts of record, since appellant has failed to comply with the requirements of rule 14, California Rules of Court, which mandates that she state the nature of the action, the relief sought, and the judgments or orders appealed from, and provide a summary of the significant facts limited to matters in the record. (Cal. Rules of Court, rule 14(a).) Although appellant's briefs appear to include references to certain alleged facts and procedural details, they are selectively presented in a light most favorable to herself. In fact, many of the alleged facts stated by appellant appear not to

be part of the record, or have no bearing upon the issues presented on appeal and the factual or procedural history of the litigation between the parties.

We will attempt to summarize the relevant facts as best we can. The subject matter of this appeal arises from a family law action seeking dissolution of marriage, hereafter referred to as the family law action, in which appellant and her former husband, respondent Joseph Saunders, were the named parties, and respondent John D. Hodson represented Saunders.

In pleadings filed in the family law action, respondents and others, including a court-appointed mediator, referred to appellant by her name, Joy Elizabeth Johnson. Appellant then brought the present action for damages, alleging that she was the "living, breathing, sentient woman known by the appellation, 'Joy Elizabeth; Johnson©', Sui Juris, in her proper person." Appellant sought damages of $64,000,032.90 against respondents, for alleged unauthorized use in the pleadings of her personal name, which constituted "Plaintiff's private, common-law, copyrighted property." According to her complaint, this use constituted a violation of appellant's contractual and other rights to royalties, as well as an alleged "security agreement" or financing statement appellant prepared, purportedly under the terms of the Uniform Commercial Code (UCC). In the appellant's opening brief, she characterizes her civil action as one designed "to reduce to judgment certain debts now due and owing by Respondents under the terms of written contracts entered into knowingly and voluntarily by the Respondents for the use of and compensation for the use of, Plaintiff's copyright/trade-name/trademarked property."

Respondents filed a special motion to strike appellant's complaint under Code of Civil Procedure section 425.16.[1] Respondents presented evidence that the appellant based her claims on documents which they, and a court appointed mediator, filed in the family law action in which appellant was referred to by name.[2] Respondents maintained

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[1] Unless otherwise indicated, all further section references are to the Code of Civil Procedure.

[2] On March 19, 2004, respondents filed a motion to augment the record with certain trial court documents filed in the family law action, in which appellant's name was used.

that appellant's claims were not only without merit, but arose from their petitioning for relief in pleadings filed with the court.

The trial court granted the special motion to strike, ruling that the use of appellant's name in the previous family law action was privileged; appellant's claims of a resulting copyright or trademark violation or contract breach were without merit; and appellant's claims arose from respondents' protected activity in prosecuting the family law action by filing pleadings, an exercise of respondents' right to petition for relief in a judicial proceeding.

II. DISCUSSION

A. SERIOUS DEFECTS IN APPELLANT'S BRIEFS.

At the outset, we would again point out that appellant has created numerous obstacles to our review of this appeal. Her briefs on appeal are seriously defective under the provisions of the California Rules of Court, and we affirm the trial court's rulings on this procedural ground. Appellant's briefing does not properly identify the order appealed from, does not include the required statement of the procedural history of the case, and does not contain comprehensible legal arguments, as required by rule 14(a), California Rules of Court. Nor are there any citations to the record supporting the factual assertions offered in appellant's briefs, as required by rule 14(a), California Rules of Court. Appellant proclaims that she presents no citations as to the standard of review applicable to summary judgment, because "[a]ny lawyer or judge who does not recognize this principle is thoroughly incompetent." (Bold omitted.) Setting aside the point that the trial court ruled on a motion to strike, appellant's multiple failures and blatant violations of the California Rules of Court impede our review, and justify a finding that she has waived any arguments seeking to overturn the trial court's rulings. (See *Balesteri v. Holler* (1978) 87 Cal.App.3d 717, 720-721; *Hansen v. Sunnyside Products, Inc*. (1997) 55 Cal.App.4th 1497, 1503, fn. 2.)

We hereby grant the motion to augment. Respondents also filed an alternative request for judicial notice as to the same documents; we deny that request as unnecessary and moot.

Nevertheless, because this appeal is so lacking in merit, we are compelled to point out its deficiencies.

B. THE SPECIAL MOTION TO STRIKE

Section 425.16 provides in relevant part: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) Subdivision (e) of section 425.16 defines "'act in furtherance of a person's right of petition or free speech'" to include: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e); see *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53 (*Equilon*); *City of Cotati v. Cashman* (2002) 29 Cal.4th 69 (*City of Cotati*); *Navellier v. Sletten* (2002) 29 Cal.4th 82 (*Navellier*).)

A trial or appellate court considering a special motion to strike under section 425.16 must independently determine two issues: "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)' [citation]. If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a

probability of prevailing on the claim. (§ 425.16, subd. (b)(1) . . . .)" (*Navellier*, *supra*, 29 Cal.4th at p. 88.)

"Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier, supra*, 29 Cal.4th at p. 89, italics in original.) In addition, "the statutory phrase 'cause of action . . . arising from' means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. [Citation.] . . . [T]he critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech. [Citations.]" (*City of Cotati, supra,* 29 Cal.4th at p. 78, italics in original; see also *Navellier*, *supra*, 29 Cal.4th at p. 89.)

Appellant does not particularly dispute that respondents' protected conduct in filing pleadings in the family law action gave rise to the gravamen or principal thrust of her claims. In fact, respondents' prosecution of the family law action, and identification of appellant by name in the pleadings, are the specifically charged acts "underlying the plaintiff's cause of action." (See *City of Cotati*, *supra*, 29 Cal.4th at p. 78.) Thus "the critical point" is that appellant's action is itself "*based on*" respondents' protected activity. (*Ibid*.; see *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1114-1115 [defamation and infliction of emotional distress actions based on defendant's various oral and written statements connected to litigation or other petitioning activity] (*Briggs*); *Equilon, supra*, 29 Cal.4th at pp. 57, 67 [suit for declaratory relief based on flawed notices of intent to sue]; *Navellier, supra*, 29 Cal.4th at pp. 89-90 [cause of action for fraud based on misrepresentations in negotiation of a release; cause of action for breach of release agreement based on filing of counterclaims]; *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 733-735 [malicious prosecution action based on cross-claim in earlier litigation] (*Jarrow*).)

Appellant's claims thus arose from respondents' protected petitioning activity in the family law litigation, and we next address the question of whether her claims were meritorious. (*Navellier, supra*, 29 Cal.4th at p. 89.)

Appellant's attempt to collect "royalties" as a result of a claimed copyright or trademark violation, because respondents identified her by name in the family law pleadings, was completely without merit. First, the pleadings filed by respondents in court were privileged, and could not form the basis of a claim for damages. (*Jarrow, supra,* 31 Cal.4th at p. 737; *Briggs, supra,* 19 Cal.4th at p. 1115; see also *Kupiec v. American Internat. Adjustment Co.* (1991) 235 Cal.App.3d 1326, 1331.) Appellant's assertions that she could prevent others from referring to her by her name in pleadings, or could require payment of royalties for such protected conduct, are without merit and frivolous. (See *D & W Food Corp. v. Graham* (1955) 134 Cal.App.2d 668, 673; cf. also *Kent © Norman v. Reagan* (D.Or. 1982) 95 F.R.D. 476.)

Moreover, appellant cannot recover damages for breach of an alleged "contract" to pay her royalties for the use of her name, since she produced no evidence of such a contract validly executed by respondents; and respondents produced evidence, credited by the trial court, establishing that there was no such contract. Appellant maintained that she had sent respondents a contract calling for the payment of such royalties. It required that respondents return the contract to her as being rejected within five days. When respondents did not reject the contract within five days, appellant alleged, a contract was formed. However, a contract requires execution and assent to terms according to a meeting of the minds of the contractual parties, and no binding contract may be formed unilaterally by the consent of only one party to the contract. (*Sorg v. Fred Weisz & Associates* (1970) 14 Cal.App.3d 78, 81.)

As we have pointed out, appellant maintains the trial court improperly granted "summary judgment" as to her complaint. This claim is also erroneous and contrary to the record. The trial court did not grant summary judgment under section 437c, but rather granted a special motion to strike pursuant to section 425.16. (See *Navellier, supra*, 29 Cal.4th at p. 89.)

In related contentions, appellant urges that we "remand with instruction to enter summary judgment in favor of Joy Elizabeth Johnson (the only party entering undisputed facts on the record) and to go forward for a jury's determination of damages . . . ." She also charges that the trial court was guilty of "misprision" and "contempt for the rule of law" in ruling against her. Nothing could be further from the truth, however. The record reveals that the trial court properly determined the legal adequacy of appellant's contentions, concluding appellant's claims were without merit, so that the special motion to strike under section 425.16 should be granted. On our de novo review of these legal rulings (see *Navellier, supra*, 29 Cal.4th at pp. 88-89) we find no impropriety in the trial court's determinations.[3]

Finally, appellant suggests the special motion to strike procedure interferes with constitutional rights of due process and access to the courts. A similar argument has been rejected by our Supreme Court. (*Equilon, supra*, 29 Cal.4th at pp. 62-64; see also *Navellier, supra*, 29 Cal.4th at pp. 87-89; accord, *Lafayette Morehouse, Inc. v. Chronicle Publishing Co*. (1995) 37 Cal.App.4th 855, 864-868.) The trial court was required to follow those rulings, and the special motion to strike was properly granted.[4] (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

For all these reasons, appellant's claims were shown to be without merit. (See *Navellier, supra*, 29 Cal.4th at p. 89.)[5]

III. DISPOSITION

The motion to augment filed March 19, 2004, is granted. The order granting the special motion to strike is affirmed.

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[3] Although appellant contends, "Joy Elizabeth Johnson, appellant, has contracted with the Court of Appeal First Appellate District in appeal number A104475," we are compelled to point out that there is no such contract.

[4] Respondents seek an award of their attorney fees on appeal. They may certainly apply to the trial court for such an award. (See Cal. Rules of Court, rule 27(c)(2).)

[5] In light of this conclusion, we need not address any other arguments of the parties regarding the merits of the claims asserted by appellant.

STEVENS, J.

We concur.

JONES, P.J.

SIMONS, J.